IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 279 OF 1992

Sawaramma T. Gopireddy & Ors. ..Appellants

versus

Ramhit R. Yadav & Anr. ..Respondents

Mr. G. S. Hegde with Lokesh for the Appellants.

None for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 28TH MARCH,2005

ORAL ORDER :

1. Heard Mr. Hegde appellants original claimants whose claim petition under the MACT Act came to be dismissed by IInd Additional Motor Accidents Claim Tribunal, Mumbai, by an order dated 30.4.1991.

2. The accident in question occurred on 28.11.1985 at about 10.30 p.m. The deceased was crossing the road when the scooter of the respondent No.1 came in a fast speed and dashed against him and he died. Therefore claim petition claiming Rs.1,50,000/- was filed. That was dismissed by the Tribunal on the ground that the appellants had

failed to establish that scooter of the respondent No.1 was involved in the accident. Mr. Hegde urged that there was eye witness of the incident, who was examined as witness No.3 for the applicant. His name was Vistappa. He has stated that on 29.11.1984 he was standing out of his house after taking lunch. At that time deceased was coming to him. He was crossing the road. Scooter came in a high speed and dashed against him, he fell down. The scooter was being driven by a man and a woman was a pillion rider. He also noted the number of the scooter as MMA-1395. He then removed the victim to the hospital but scooterwala ran away from the spot along with the scooter. He was cross examined by the opponents. Nothing fruitful is brought on record. His statement was also recorded by the police wherein he had given the number. According to him the scooter was of the red colour. Owner of the scooter had also entered the witness box. He however stated that on the date of the accident, his vehicle was out of order and no accident had taken place and he had given scooter to the garage for repairs on 24.11.1985 but he got it back on 5.12.1985. He wants the court to believe therefore that the scooter could not be on the road on 28.11.1985. However, he is falsified by the garage owner Witness No.5 of the applicant, Ravi Sampanna Savi. He has stated that he was knowing Ramjit

Yadav - the owner of the vehicle in 1985 on 28th in some month which he does not recollect the scooter has been given to him for repairs. He repaired it and left it at the factory of the owner at Prabhadevi in the evening at about 6 p.m. the owner's man took trial to find out whether the scooter was properly repaired and then on 30th owner Ramjit called him back at the factory and asked him to repair the scooter. The scooter was not in proper condition, handle was moving and was damaged, stand of the scooter was also damaged. The witness Ravi was told that scooter had fallen down. Then on 6th of the following month he gave it back after painting, which explains as to why the eye witness has given one colour of the scooter and colour of the scooter was changed as alleged.

3. There is therefore direct evidence against the owner of the scooter. The most important thing is that a number of the scooter was noted down by the eye witness and it tallies. The evidence of the owner is contradicted by his own garage man Ravi. There was no reason for independent witness to involve the scooter in the accident. He was alert enough to note down the number of scooter. The Tribunal however did not consider these material aspects of the matter in proper perspective and came to a wrong conclusion. Therefore, the order of the

dismissal of the application is liable to be set aside.

4. So far as quantum of compensation is concerned, the wife of the claimant was examined. The deceased was 35 years of age on the date of the accident as per the wife's statement. He was earning Rs.1,200/- per month. He had number of dependants. Considering these facts, even if Rs.1,000/- per month is taken as a contribution of the deceased to the family and multiplier of 15 or 14 is applied, the amount exceeds Rs.1,50,000/- that was claimed. In fact, the claimants will be also entitled to consortium and funeral expenses. Therefore, in any case the claim made by the claimants for compensation is required to be allowed and hence I pass the following order:

ORDER

. Appeal is allowed.

. Impugned order of dismissal of the claim petition is set aside. Claim petition is allowed to the extent of Rs.1,50,000/-. The Respondents to pay this amount to the claimants with interest at the rate of 9% per annum from the date of the application till date of payment. Respondents will

also bear costs of the trial court as well as of the appellate court.

28.03.2005 (D.G. DESHPANDE, J.)